

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 67

AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 36-8-16.5-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) The board shall select a third party to audit the fund every two (2) years to determine whether the fund is being managed in accordance with this chapter. The board shall pay for an audit by the third party auditor as an administrative cost of the board.

(b) Every two (2) years, the board shall review wireless 911 service in Indiana, including the collection, disbursement, and use of the wireless emergency enhanced 911 fee assessed under section 25.5 of this chapter. The purpose of the review is to ensure that the 911 fees:

(1) do not exceed the amount reasonably necessary to provide adequate and efficient wireless 911 service; and

(2) are used only for the purposes set forth in this chapter.

The board shall adopt a review conducted under this subsection.

SECTION 2. IC 36-8-16.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26. (a) The board may adjust the wireless emergency enhanced 911 fee that is assessed under section 25.5 of this chapter. The board shall assess the ~~fees~~ fee at rates that ensure full recovery over a reasonable period of time of:

(1) costs incurred by CMRS providers before July 1, 2005; and

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**(2) the amount needed for the board to make distributions to PSAPs consistent with this chapter;**  
to develop and maintain an enhanced wireless 911 system.

**(b) The fees assessed under section 25.5 of this chapter may not:**

- (1) be raised or lowered more than one (1) time in a calendar year;
- (2) be raised more than seven cents (\$0.07) by an adjustment; or
- (3) exceed one dollar (\$1) per month for each telephone number.

**(c) If:**

- (1) all CMRS providers have been reimbursed for their costs as provided in section 39(c) of this chapter; and**
- (2) the fee assessed under section 25.5 of this chapter is greater than fifty cents (\$0.50);**

**the board shall reduce the fee so that the fee is not more than fifty cents (\$0.50). A reduction of the fee under this subsection is not to be considered an adjustment under subsection (a).**

SECTION 3. IC 36-8-16.5-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. A CMRS provider may keep ~~two percent (2%)~~ **seven tenths of a cent (\$0.007)** of the wireless emergency enhanced 911 fee collected each month from each subscriber for the purpose of defraying the administrative costs of collecting the fee.

SECTION 4. IC 36-8-16.5-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 37. **Except as provided in section 35 of this chapter,** a CMRS provider may recover ~~from the fund~~ all of its ~~cost of implementing costs incurred before July 1, 2005, to implement~~ enhanced wireless 911 service. ~~from the fund. To be recovered from the fund, the costs must be invoiced to the board as required by section 42 of this chapter.~~

SECTION 5. IC 36-8-16.5-39 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 39. (a) Except as provided by section 26 of this chapter and ~~subsection~~ **subsections (b) and (c),** the fund must be managed in the following manner:

- (1) Three cents (\$0.03) of the wireless emergency 911 fee collected from each subscriber must be deposited in an escrow account to be used to reimburse:

**(A) CMRS providers, and PSAPs, and the board** for costs associated with implementation of phase two (2) of the FCC order; **and**

**(B) the board for costs associated with other wireless enhanced 911 services mandated by the FCC and specified in the FCC order but not incurred by CMRS providers or**

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**PSAPs.**

**A CMRS provider or a PSAP may recover costs under this chapter if the costs are incurred before July 1, 2005, and invoiced to the board not later than December 31, 2005.** The board may invest money in the account in the manner prescribed by section 23 of this chapter and may use the proceeds of the investments to reimburse CMRS providers and PSAPs under this subdivision. ~~The board shall reevaluate the fees placed into escrow not later than May 1, 2000. The board shall determine if the fee should be reduced, remain the same, or be increased based on the latest information available concerning the costs associated with phase two (2) of the FCC order.~~

(2) At least twenty-five cents (\$0.25) of the wireless emergency 911 fee collected from each subscriber must be deposited in an escrow account and used to reimburse CMRS providers for the actual costs incurred by the CMRS providers **before July 1, 2005**, in complying with the wireless 911 requirements established by the FCC order and rules that are adopted by the FCC under the FCC order, including costs and expenses incurred in designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required to provide service as well as the costs of operating the service. The board may invest money in the account in the manner prescribed by section 23 of this chapter and may use the proceeds of the investments to reimburse CMRS providers under this subdivision. ~~Except as provided by section 38 of this chapter,~~ The CMRS provider may only request funds for true cost recovery. The board may increase the amount held in escrow under this subdivision not more than one (1) time a calendar year. If the board adjusts the wireless emergency 911 fee under section ~~26~~ **26(a)** of this chapter within a calendar year, an adjustment to the amount held in escrow under this subdivision for the calendar year must be made at that time.

(3) Two percent (2%) of the wireless emergency 911 fee collected from each subscriber may be used by the board to recover the board's expenses in administering this chapter. However, the board may increase this percentage at the time the board may adjust the monthly fee assessed against each subscriber to allow for full recovery of administration expenses.

(4) The remainder of the wireless emergency 911 fee collected from each subscriber must be distributed in the following manner:

(A) The board shall distribute on a monthly basis to each

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county containing one (1) or more eligible PSAPs, as identified by the county in the notice required under section 40 of this chapter, a part of the remainder based upon the county's percentage of the state's population (as reported in the most recent official United States census). A county must use a distribution received under this clause to ~~reimburse~~ **make distributions to** PSAPs that:

- (i) are identified by the county under section 40 of this chapter as eligible for distributions; and
- (ii) accept wireless enhanced 911 service;

for actual costs incurred by the PSAPs in complying with the wireless enhanced 911 requirements established by the FCC order and rules.

(B) The amount of the fee remaining, if any, after the distributions required under clause (A) must be distributed in equal shares between the escrow accounts established under subdivisions (1) and (2).

(b) Notwithstanding the requirements described in subsection (a), the board may transfer money between and among the accounts in subsection (a) in accordance with the following procedures:

(1) For purposes of acting under this subsection, the board must have a quorum consisting of at least one (1) member appointed under section 18(c)(2) of this chapter and at least one (1) member appointed under section 18(c)(3) of this chapter.

(2) A transfer under this subsection must be approved by the affirmative vote of:

(A) at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(2) of this chapter; and

(B) at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(3) of this chapter.

(3) The board may make transfers only one (1) time during a calendar year.

(4) The board may not make a transfer that:

(A) impairs cost recovery by CMRS providers or PSAPs; or

(B) impairs the ability of the board to fulfill its management and administrative obligations described in this chapter.

**(c) If all CMRS providers have been reimbursed for their costs under this chapter, and the fee has been reduced under section 26(c) of this chapter, the board shall manage the fund in the following manner:**

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(1) One cent (\$0.01) of the wireless emergency 911 fee collected from each subscriber may be used by the board to recover the board's expenses in administering this chapter. However, the board may increase this amount at the time the board may adjust the monthly fee assessed against each subscriber to allow for full recovery of administration expenses.

(2) Thirty-eight and three tenths cents (\$0.383) of the wireless emergency 911 fee collected from each subscriber must be distributed to each county containing at least one (1) PSAP, as identified in the county notice required by section 40 of this chapter. The board shall make these distributions in the following manner:

(A) The board shall distribute on a monthly basis to each eligible county thirty-four and four tenths cents (\$0.344) of the wireless emergency 911 fee based upon the county's percentage of the state's population.

(B) The board shall distribute on a monthly basis to each eligible county three and nine tenths cents (\$0.039) of the wireless emergency 911 fee equally among the eligible counties. A county must use a distribution received under this clause to reimburse PSAPs that:

(i) are identified by the county under section 40 of this chapter as eligible for distributions; and

(ii) accept wireless enhanced 911 service;

for actual costs incurred by the PSAPs in complying with the wireless enhanced 911 requirements established by the FCC order and rules.

(C) The board shall deposit the remainder of the wireless emergency 911 fee collected from each subscriber into an escrow account to be used for costs associated with other wireless enhanced 911 services mandated by the FCC and specified in the FCC order but not incurred by PSAPs. The board may invest money in the account in the manner prescribed by section 23 of this chapter and may use the proceeds of the investments for costs associated with other wireless enhanced 911 services mandated by the FCC but not specified in the FCC order or to make distributions to PSAPs under this section.

(3) If the fee has been reduced under section 26(c) of this chapter, the board shall determine how money remaining in the accounts or money for uses described in subsection (a) is

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**to be allocated into the accounts described in this subsection or used for distributions under this subsection.**

**This subsection does not affect the transfer provisions set forth in subsection (b).**

SECTION 6. IC 36-8-16.5-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 42. (a) A CMRS provider shall submit to the board sworn invoices related to a request for reimbursement under section 39 of this chapter. An invoice submitted under this section must contain language swearing or affirming, under the penalty of perjury, that the representations made in the invoice are accurate to the best of the signer's knowledge. The signer must be:

- (1) an employee or officer of the CMRS provider submitting the invoice; and
- (2) designated by the CMRS provider to sign on its behalf and bind the CMRS provider to the representations made.

The board may not approve an invoice submitted under this section if reimbursement of a cost described in the invoice is not related to compliance with the requirements of the FCC order and the rules adopted by the FCC under the FCC order. **The board may not approve an invoice submitted under this section after December 31, 2005.**

(b) If:

- (1) the board receives a written complaint alleging that a CMRS provider has used money received under this chapter in a manner that is inconsistent with this chapter; and
- (2) a majority of the board votes to conduct an audit of the CMRS provider;

the board may contract with a third party auditor to audit the CMRS provider to determine whether the CMRS provider has used money received under this chapter in a manner consistent with this chapter.

SECTION 7. IC 36-8-16.5-50 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 50. The utility regulatory commission may not exercise jurisdiction over the:**

- (1) rates;**
- (2) terms; or**
- (3) conditions;**

**of CMRS service, including a CMRS mobile phone.**

SECTION 8. IC 36-8-16.5-15 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 9. [EFFECTIVE JULY 1, 2005] **(a) The wireless**

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enhanced 911 advisory board established by IC 36-8-16.5-18 shall conduct:

- (1) an initial review under IC 36-8-16.5-24(b), as amended by this act, not later than June 30, 2006; and
  - (2) subsequent reviews under IC 36-8-16.5-24(b), as amended by this act, every two (2) years thereafter.
- (b) This SECTION expires January 1, 2007.

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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